

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

**FILED**

MAR 03 2025

CLERK, U.S. DISTRICT COURT  
TEXAS EASTERN

JENNIFER RYAN,

Plaintiff,

v.

PAYPAL INC.,

Defendant.

CIVIL ACTION NO.: 4:22-cv-559

JURY TRIAL DEMANDED

**PLAINTIFF'S SUR-REPLY TO DEFENDANT'S RESPONSE TO  
PLAINTIFF'S SUPPLEMENTAL MOTION TO LIFT THE STAY**

TO THE HONORABLE JUDGE AMOS MAZZANT:

Plaintiff Jennifer Ryan, pro se, submits this Sur-Reply to Defendant PayPal Inc.'s Response (Dkt. #51, filed February 26, 2025) to her Supplemental Motion to Lift the Stay (Dkt. #47), pursuant to Local Rule CV-7(f). Plaintiff incorporates her prior pleadings (*e.g.*, Dkt. #9, #30, #44, #47, #49, #50) and her Supplemental Motion to Declare Arbitration Waived (filed concurrently), asserting that PayPal's substantive arguments in Dkt. #51, coupled with 32 months of litigation and 23 months of inaction post-arbitration order (Dkt. #25), waive their right to enforce arbitration under the User Agreement (UA, Dkt. #10-8). Plaintiff requests the Court overrule PayPal's objections and grant her motions.

**I. INTRODUCTION**

1. The UA mandates: "*You and PayPal each agree that any and all disputes or claims... shall be resolved exclusively through final and binding arbitration*" (Dkt. #10-8), with "*all issues*" for the arbitrator except "*arbitrability, the scope or enforceability*" (*id.*), intended as "*more informal than a lawsuit in court*" (*id.*).

2. PayPal's Response to Plaintiff's Supplemental Motion to Lift the Stay argues the merits of Plaintiff's state actor claims (*Dkt. #49*, 27) and objects to her evidence as hearsay (*Dkt. #51*, p. 2 n.1), exceeding the UA's court-limited scope and waiving arbitration (*Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 1714 (2022)).
3. PayPal's 32-month litigation (*July 2022–March 2025*), including 23 months post-Dkt. #25 without AAA action (*Dkt 54, Exhibit 2—AAA Letter, October 3, 2023*), despite mutual duty ("you or PayPal may initiate," *Dkt. #10-8*), further confirms waiver (*Carson v. American Brands, Inc.*, 606 F.2d 420, 424 (4th Cir. 1979)).

## II. PAYPAL'S SUBSTANTIVE ARGUMENTS IN DKT. #51 BREACH THE UA

4. PayPal's Dkt. #51 oversteps the UA's court role ("arbitrability, scope or enforceability," *Dkt. #10-9*):
  - **State Actor Rebuttal:** "None of [Plaintiff's evidence] suggests any direct nexus... that PayPal could be considered a state actor... no evidence that the government had control" (*Dkt. #51*, p. 3)—disputes the merits of Plaintiff's claim (*Dkt. #49*, 27), not arbitrability (*Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 n.13 (1985)—substance to arbitrator).
  - **Hearsay Objection:** Plaintiff's exhibits are "inadmissible hearsay... no evidence supports Ryan's allegations" (*Dkt. #51*, p. 2 n.1)—weighs proof, a substantive issue for arbitrator (*Morgan*—court avoids merits).
5. Post-Dkt. #25, PayPal should defer to arbitration: "All claims are for the arbitrator" (*Dkt. #10-8*). Instead, Dkt. #51 seeks judicial rulings on claim validity, breaching the UA (*Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967)).

## III. PAYPAL'S 32-MONTH LITIGATION AND INACTION CONFIRM WAIVER

6. PayPal's removal (*Dkt. #1*) and responses (*Dkt. #10, #33, #36, #45, #51*) over 32 months—23 post-Dkt. #25—without AAA filing or dismissal show intent to litigate (*Morgan*, 142 S. Ct. at 1714—32 months exceeds *Cabinetree of Wis. v. Kraftmaid Cabinetry, Inc.*, 50 F.3d 388, 391 (5th Cir. 1995)—18 months)).

7. Plaintiff's AAA filing (*Dkt. #54, Exhibit 1—August 2023*) closed for PayPal's inaction (*Dkt. #54, Exhibit 2 - October 2023*) without pursuit breaches mutual duty (*Dkt. #10-8*) (*In re Winter Park Assoc. Ltd. P'ship v. Jaspar*, 1999 WL 739433, at \*2 (S.D. Tex. 1999)—14 months waived).

#### IV. PAYPAL SEEKS COURT RULINGS, NOT ARBITRATION

8. *Dkt. #51 (p. 3)* and prior filings (*e.g., Dkt. #33—unconscionability*) argue Plaintiff's claims lack merit—seeking court denial, not arbitration's “informal” process (*Dkt. #10-9*) (*Price v. Drexel Burnham Lambert, Inc.*, 791 F.2d 1156, 1160 (5th Cir. 1986)—18 months waived)).
9. PayPal litigates substance when scrutinized (*Dkt. #51*) but pushes arbitration when advantageous (*Dkt. #10*)—dual tactics waive (*Morgan*—intent to exhaust Plaintiff).

#### V. PLAINTIFF'S GOOD FAITH VS. PAYPAL'S BREACH

10. Plaintiff sought AAA arbitration (*Dkt. #54, Exhibit 1*), but PayPal's non-participation halted it (*Dkt. #54, Exhibit 2*)—23 months inaction post-*Dkt. #25* breaches mutual duty (*Dkt. #10-8*) (*Morgan*).

#### VI. RESPONSE TO PAYPAL'S OBJECTIONS

11. **Hearsay:** PayPal's objection (*Dkt. #51, p. 2 n.1*) to Plaintiff's exhibits (*e.g., PayPal's Statement Re: Law Enforcement Partnership, Dkt. #47, Exhibit A*) misapplies trial standards to a motion stage (*Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)—flexible evidence). Exhibits like PayPal statements (*Dkt. #47-A*) are admissions (Fed. R. Evid. 801(d)(2)), and government reports are public records (Fed. R. Evid. 803(8))—admissible and relevant to state action (*Dkt. #49, 27*).
12. **Pro Se Status:** PayPal's prior objection (*Dkt. #33, p. 1 n.2*) to corporate entities is moot—Plaintiff proceeds individually, and pro se filings are construed liberally (*Haines v. Kerner*, 404 U.S. 519, 520 (1972)).



## VII. CONCLUSION

13. PayPal's 32-month litigation (*Dkt. #51—substance*), 23-month inaction (*Dkt. #25*), and breach of “*all claims*” to arbitrator (*Dkt. #10-8*) waive arbitration (*Morgan*, 142 S. Ct. at 1714; *Carson*, 606 F.2d at 424; *Winter Park*, 1999 WL 739433, at \*2). With new counsel poised to press this case, PayPal's 32-month breach faces full exposure. Plaintiff requests:

- Overrule PayPal's objections (*Dkt. #51*).
- Grant Supplemental Motion to Lift Stay (*Dkt. #47*).
- Declare arbitration waived (*Dkt. #50*).
- Any further relief deemed just.

March 4, 2025

Respectfully Submitted,

  
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### Certificate of Service

I certify that on March 1, 2025, I served this via CM/ECF on all counsel of record, per Fed. R. Civ. P. 5 and Local Rule CV-5.

/s/ Jennifer L. Ryan